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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/817,528

04/02/2004

Shona L. Nelson

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EXAMINER

DOUYON, LORNA M

ART UNIT

PAPER NUMBER

1751

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/09/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/817,528

Applicant(s)

NELSON ET AL.

Examiner

Lorna M. Douyon

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1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-19 and 21-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-19 and 21-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. This action is responsive to the amendment filed on October 30, 2006.
2. Claims 14-19 and 21-24 are pending. Claims 1-13, 20, 25-27 are cancelled. It is noted that the status identifiers of claims 16-19, 21-24 should have been "(Original)", and not "(Currently Amended)".
3. The rejection of claims 14-23 under 35 U.S.C. 112, second paragraph is withdrawn in view of Applicants' amendment.
4. **Claim 24** is rejected under 35 U.S.C. 112, **second paragraph**, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In line 2, the term "device" should have been a "process". Please see original claim 24.

5. The rejection of claims 14-24 under 35 U.S.C. 102(b) as being anticipated by Zocchi et al. (US Patent No. 6,080,792) is withdrawn in view of Applicants' amendment.
6. The rejection of claims 14-24 under 35 U.S.C. 102(e) as being anticipated by Garabedian et al. (US 2004/0144406) is withdrawn in view of Applicants' amendment.

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7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 14-19, 21 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Hansen et al. (US Patent No. 6,376,542), hereinafter "Hansen".

Hansen teaches methods for killing dust mites and cleaning carpets and other textile fabrics like bedding (see abstract, col. 5, line 39; col. 6, line 22) with miticide compositions (see abstract). The diluted composition is sprayed onto a carpet and then vacuumed up from the carpet, preferably after agitating the material into the carpet and/or allowing the material to reside in the carpet for a given length of time (see col. 3, lines 15-19). In Example 2, Hansen teaches a miticide composition which was prepared by mixing together benzyl benzoate, benzyl alcohol and PNP glycol ether to which was added water and surfactants, and the mixture formed was a clear solution, diluted with water and sprayed onto a carpet, and the miticide kill rate was 85-100% (see col. 7, lines 10-58). Even though Hansen does not explicitly disclose the solubility in water of the glycol ether and its vapor pressure, the glycol ether of Hansen inherently possess a solubility in water and vapor pressure within those recited because the same glycol ethers have been utilized. Hence, Hansen anticipates the claims.

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9. Claims 14-19 and 21-24 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Klier et al. (US Patent No. 5,597,792), hereinafter "Klier".

Klier teaches high water content oil continuous microemulsion, which is single phase, (see col. 1, lines 38-40), (and is equivalent to "solution" of the present claims) containing one or more organic solvents (see abstract) for use in metal cleaning, dry cleaning, fabric cleaning (which includes carpet) and as a laundry pretreater, and in aerosol, pump, spray or liquid formulations (see col. 2, lines 49-61). Suitable organic solvents include alkylene glycol monoethers and alkylene glycol ether acetates (see col. 4, line 57 to col. 5, line 16). In Example 7, Klier teaches a clear, single phase oil continuous microemulsion comprising dipropylene glycol n-butyl ether (DPnB) and water (see col. 16, lines 13-23). In Example 8, Klier also teaches a microemulsion comprising PnB and water (see col. 16, lines 35-50, Table 8 under cols. 17-18). When the microemulsions are used in dry cleaning, fabric cleaning and laundry pretreating, it is understood that the microemulsions and emulsions are applied to the fabric or laundry. Even though Klier does not explicitly disclose the solubility in water of the glycol ether, its vapor pressure, the kill rate of the composition and its use for controlling dust mites and allergens, the glycol ethers of Klier inherently possess a solubility in water, vapor pressure and kill rate within those recited because the same glycol ethers have been utilized. In addition even though Klier does not teach use of his composition for controlling dust mites and allergens, the two different intended uses are not distinguishable in terms of the composition, see *In re Thuau*, 57 USPQ 324; *Ex parte*

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Douros, 163 USPQ 667; and *In re Craige*, 89 USPQ 393. Hence, Klier anticipates the claims. The wiping and vacuuming steps in the present claims are only optional and need not be taught by Klier. Even if the teachings of Klier are not sufficient to anticipate the claims, it would have been nonetheless obvious to one of ordinary skill in the art at the time the invention was made to prepare a composition comprising alkylene glycol monoethers and alkylene glycol ether acetates for dry cleaning, fabric cleaning and laundry pretreating because the teachings of Klier encompass these aspects and to reasonably expect the laundry or fabric, during pretreatment to be wiped with a cleaning substrate because laundry or fabric pretreatment requires such step.

10. Claims 14-19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zocchi et al. (US Patent No. 6,080,792), hereinafter "Zocchi".

Zocchi teaches foam compositions which are used for treating textile surfaces of interior furnishings such as carpets for the purpose of killing dust mites (see col. 1, lines 9-12), and the foam compositions can be readily removed from the treated surface by post vacuuming (see col. 1, lines 54-57), wherein the foam composition comprises a hydrocarbon propellant, ether solvent such as ethylene glycol monobutyl ether, ethylene glycol monoacetate and dipropylene glycol propionate (see col. 1, line 61 to col. 3, line 4). Zocchi teaches carpet which is treated with a foam cleaning composition comprising diethylene glycol monobutyl ether, wherein 100% dead dust mites were observed from a neat product in a 30 minute contact time (see Example 1 under col. 9, lines 1-45). Zocchi, however, fails to disclose the solubility in water of the glycol ether and its vapor

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pressure, and the step of applying onto the surface a solution comprising a glycol ether, a glycol ether ester, or combination thereof.

Even though Zocchi does not explicitly disclose the solubility in water and vapor pressure of the glycol ethers, it would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the glycol ethers of Zocchi to possess the characteristics as those recited because the same glycol ethers have been utilized. In addition, even though Zocchi does not disclose a "solution", rather a "foam" due to the presence of the propellant, the "solution" of the present claims, however, does not exclude the presence of other ingredients like "propellant" of the present claims.

11. Claims 14-19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garabedian et al. (US 2004/0144406), hereinafter "Garabedian".

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Garabedian teaches a method of cleaning carpets by applying an aerosol carpet cleaning composition to the carpet, wiping the carpet with a cleaning implement comprising a disposable cleaning substrate, and allowing the carpet to dry (see

paragraph 0205 on page 18). Another method of cleaning carpets is by applying an aerosol carpet cleaning composition to the carpet , optionally wiping the carpet with a substrate, allowing the carpet to dry, and optionally vacuuming (see paragraph 0214 on page 19). The aerosol cleaning composition includes organic solvents such as alkylene glycol ethers, and acetate and propionate esters of glycol ethers (see 0087 on pages 6-7). In Example A, Garabedian teaches an aerosol cleaning composition comprising dipropylene glycol n-propyl ether (see Table I on page 19). Garabedian, however fails to disclose the solubility in water of the glycol ether, its vapor pressure, the kill rate of the composition and its use for controlling dust mites and allergens, and the step of applying onto the surface a solution comprising a glycol ether, a glycol ether ester, or combination thereof.

Even though Garabedian does not explicitly disclose the solubility in water of the glycol ether, its vapor pressure, the kill rate of the composition and its use for controlling dust mites and allergens, it would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the glycol ethers of Garabedian Zocchi to possess the characteristics as those recited because the same glycol ethers have been utilized. In addition, even though Garabedian does not disclose a "solution", rather an "aerosol" due to the presence of the propellant, the "solution" of the present claims, however, does not exclude the presence of other ingredients like "propellant" of the present claims.

Response to Arguments

12. Applicant's arguments filed October 30, 2006 have been fully considered but they are not persuasive.

With respect to the rejection based upon Zocchi, Applicants argue that claim 14 has been amended to claim a "solution" comprising a glycol ether, a glycol ether ester, or a combination thereof, wherein one of said glycol ether or glycol ether ester has less than about 15% solubility in water at 20°C, while Zocchi discloses foam compositions containing 2% to 10% of a hydrocarbon propellant, and that the compositions of Zocchi are two phases and not solutions.

The Examiner respectfully disagrees with the above arguments because the phrase "comprising" does not exclude the propellant from the "solution" of the present claims. "Comprising" leaves the claim open for the inclusion of unspecified ingredients even in major amounts, see *Ex parte Davis et al.*, 80 USPQ 448 (PTO Ed. App. 1948). Also, the broad "comprising" and "containing" terminology do not exclude the presence of other ingredients in the composition, unlike the narrow "consisting of" language, see *Swain v. Crittendon*, 332 F.2d 820, 141 USPQ 811 (CCPA 1964).

With respect to the rejection based upon Garabedian, Applicants argue that claim 14 has been amended to claim a "solution" comprising a glycol ether, a glycol ether ester, or a combination thereof, wherein one of said glycol ether or glycol ether ester has less than about 15% solubility in water at 20°C, while Garabedian discloses aerosol compositions containing 5% propellant, and that the compositions of Garabedian are two phases and not solutions.

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The Examiner respectfully disagrees with the above arguments because, as stated in Zocchi above, the phrase "comprising" does not exclude the propellant from the "solution" of the present claims.

With respect to the rejection based upon Klier, Applicants argue that claim 14 has been amended to claim a "solution" comprising a glycol ether, a glycol ether ester, or a combination thereof, wherein one of said glycol ether or glycol ether ester has less than about 15% solubility in water at 20°C, while Klier discloses emulsions which "upon standing the emulsions form at least two phases wherein at least one phase is an oil continuous microemulsion (sol. 9, lines 16-18), and that the compositions of Klier are two phases and not solutions. Applicants also argue that since Klier does not teach solutions, there is no suggestion or expectation of success that the solutions of claim 14 would be effective at killing dust mites.

The Examiner respectfully disagrees with the above arguments because even though Klier discloses emulsions which "upon standing the emulsions form at least two phases....", this is but another aspect of the invention of Klier. As stated above, Klier, in one aspect, teaches a single phase oil continuous microemulsion in col. 1, lines 38-40; col. 3, lines 27-35; col. 16, lines 13-23, hence, this microemulsion, which is a solution, would exhibit a kill efficacy for dust mites as those recited because the same glycol ethers have been utilized.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

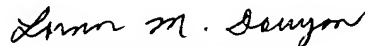
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Lorna M. Douyon
Primary Examiner
Art Unit 1751